

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.72 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection(s)
2. For hearing of main case

19.12.2023

Mr. Muhammad Saleem Chohan advocate for appellant.

Briefly stated, F.C. Suit 616 of 2017 was filed before 5th Senior Civil Judge Hyderabad and the same was dismissed vide Judgment dated 02.05.2019. Civil Appeal 127 of 2019 was preferred there against before the 8th Additional District Judge Hyderabad and the same was dismissed for non-prosecution on 10.07.2019. Against the said order a restoration application was preferred and the same was dismissed vide order dated 02.12.2020. The present second appeals assails the aforementioned order.

This appeal has been remained pending since 2020 and the objection memo demonstrates that even court fee has not been paid herein. Be that as it may, at the very outset learned counsel was confronted as to under what provision of 100 CPC could this appeal can be entertained; however, he failed to provide a cogent response.

The appellate court held *inter alia* that it had given ample time to the appellant, exceeding a year, however, the appellant failed to proceed, therefore, the appeal was dismissed in non-prosecution.

The learned counsel was confronted with the narrative contained in the impugned order and asked as to whether it was commensurate with the facts; he replied in the affirmative. Learned counsel was then asked to demonstrate any infirmity in the order meriting interference under Section 100 of the Code of Civil Procedure, however, he remained unable to do so.

A party is required to remain vigilant with respect to legal proceedings; more so when the same have been preferred by the party itself. The truancy of the appellant from the proceedings under scrutiny is *prima facie* apparent and the same has also been admitted by the newly engaged counsel. Under such circumstances it was the prerogative of the Court to determine the proceedings and that is what appears to have been done. Counsel remained unable to justify the persistent absence and no case has been made out to condone the default. The Supreme Court has observed in *Nadeem H Shaikh*¹ that the law assists the vigilant, even in causes most valid and justiciable. The fixation of cases before benches / courts entails public expense and time, which must not be incurred more than once in the absence of a reason most genuine and compelling. Default is exasperating and such long drawn ineptitude cannot be allowed to further encumber pendency of the Courts.

It is settled law that a second appeal may only lie if a decision is demonstrated to be contrary to the law; a decision having been failed to

¹ Per Qazi Muhammad Amin Ahmed J. in *SECP vs. Nadeem H Shaikh & Others (Criminal Appeal 518 of 2020)*; Order dated 27.10.2020.

determine some material issues; and / or a substantial error in the procedure is pointed out. It is categorically observed that none of the aforesaid ingredients have been identified by the learned counsel. In such regard it is also important to advert to section 101 of CPC, which provides that no appeal shall lie except on the grounds mentioned in the Section 100 of CPC. While this Court is cognizant of Order 41 Rule 31 CPC, yet at this stage no case has been set forthwith to entertain the present appeal in view of the reasoning stated above. As a consequence hereof, in *mutatis mutandis* application of Order XLI Rule 11 C.P.C, this appeal is hereby dismissed. The office is instructed to convey a copy hereof to the appellate court.

Judge

Ali Haider